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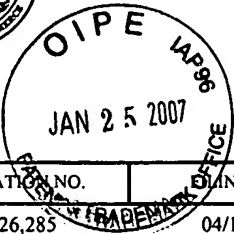
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APPLICATION NO.	MAILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/826,285	04/19/2004	Lawrence Binder	GMI.0012.US	9932

7590 01/19/2007
John P. Mulgrew
11012 Langton Arms Ct.
Oakton, VA 22124

EXAMINER

ARAJ, MICHAEL J

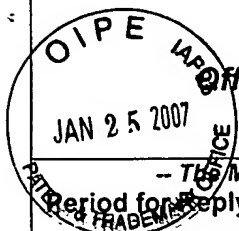
ART UNIT	PAPER NUMBER
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3733

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	01/19/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.



Office Action Summary

Application No.

10/826,285

Applicant(s)

BINDER ET AL.

Examiner

Michael J. Araj

Art Unit

3733

-- THE MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above claim(s) 21-25 is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 19 April 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date 7/27/06, 8/07/06
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: ____

DETAILED ACTION

Election/Restrictions

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-20, drawn to an apparatus, classified in class 606, subclass 69.
- II. Claims 21-25, drawn to a fastener, classified in class 606, subclass 73.

The inventions are distinct, each from the other because of the following reasons:

Inventions I and II are related as combination and subcombination. Inventions in this relationship are distinct if it can be shown that (1) the combination as claimed does not require the particulars of the subcombination as claimed for patentability, and (2) that the subcombination has utility by itself or in other combinations (MPEP § 806.05(c)). In the instant case, the combination as claimed does not require the particulars of the subcombination as claimed because the combination does not require a fastener with at least one slit extending between the outer surface and interior surface of the fastener head. The subcombination has separate utility such as fastening a ligament into bone.

The examiner has required restriction between combination and subcombination inventions. Where applicant elects a subcombination, and claims thereto are subsequently found allowable, any claim(s) depending from or otherwise requiring all the limitations of the allowable subcombination will be examined for patentability in accordance with 37 CFR 1.104. See MPEP § 821.04(a). Applicant is advised that if any claim presented in a continuation or divisional application is anticipated by, or

includes all the limitations of, a claim that is allowable in the present application, such claim may be subject to provisional statutory and/or nonstatutory double patenting rejections over the claims of the instant application.

Because these inventions are independent or distinct for the reasons given above and there would be a serious burden on the examiner if restriction is not required because the inventions have acquired a separate status in the art in view of their different classification, restriction for examination purposes as indicated is proper.

Because these inventions are independent or distinct for the reasons given above and there would be a serious burden on the examiner if restriction is not required because the inventions require a different field of search (see MPEP § 808.02), restriction for examination purposes as indicated is proper.

During a telephone conversation with Brian Malms on January 5, 2007 a provisional election was made without traverse to prosecute the invention of Group I, claims 1-20. Affirmation of this election must be made by applicant in replying to this Office action. Claims 21-25 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Drawings

The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description: There are no reference numbers in Figures 1-16. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to

be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-20 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 8-23 of copending Application No. 11/097,340. Although the conflicting claims are not identical, they are not patentably distinct from each other because they are claiming the same invention.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-20 are rejected under 35 U.S.C. 102(b) as being anticipated by Fiz (U.S. Patent No. 6,241,731).

Fiz discloses a plate having at least one opening having a spherical curvature extending at least partially through the thickness of the plate (see Fig 2A) and at least one fastener having a head that interferes with the plate at an interference point, wherein the head is capable of engaging with and passing the interference point to

communicate with the spherical curvature. The interference point includes at least one engagement area and at least one relief area. The relief area comprises less than about 40 and 30 % of the interference point. The tangents from the outer most portion of the spherical curvature of the plate intersect at angles between 1 and 5 degrees. The fastener head comprises a partially spherical outer surface corresponding to the spherical surface of the plate opening, at least one slit (8) located on the fastener head. With regard to the statement of intended use and other functional statements, they do not impose any structural limitations on the claims distinguishable over Fiz which is capable of being used as claimed if one so desires to do so. *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963). Furthermore, the law of anticipation does not require that the reference "teach" what the subject patent teaches, but rather it is only necessary that the claims under attack "read on" something in the reference. *Kalman v. Kimberly Clark Corp.*, 218 USPQ 781 (CCPA 1983). Furthermore, the manner in which a device is intended to be employed does not differentiate the claimed apparatus from prior art apparatus satisfying the claimed structural limitations. *Ex parte Masham*, 2 USPQ2d 1647 (1987).

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. See PTO-892 for art cited of interest.

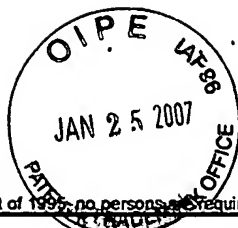
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael J. Araj whose telephone number is 571-272-5963. The examiner can normally be reached on M-F 8am-5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo Robert can be reached on 571-272-4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


MJA


EDUARDO C. ROBERT
SUPERVISORY PATENT EXAMINER



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Sheet	1	of	2
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Application Number	10/826,285
Filing Date	April 19, 2004
First Named Inventor	BINDER
Art Unit	3732
Examiner Name	Unknown
Attorney Docket Number	0218.007.0002

U. S. PATENT DOCUMENTS

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FOREIGN PATENT DOCUMENTS

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Examiner Initials*	Cite No. ¹	Foreign Patent Document	Publication Date MM-DD-YYYY	Name of Patentee or Applicant of Cited Document	Pages, Columns, Lines, Where Relevant Passages Or Relevant Figures Appear	1 ⁶
		Country Code* ² Number * ³ Kind Code* ⁴ (if known)				
MA		ISR PCT/US05/13253				
MA		Writ. Opn. PCT/US05/13253				

/Michael Araj/

Date Considered

01/06/2007

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This collection of information is required by 37 CFR 1.97 and 1.98. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 2 hours to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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STATEMENT BY APPLICANT**

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Art Unit	3732
Examiner Name	Unknown
Attorney Docket Number	0218.007.0002

Sheet 2 of 2

NON PATENT LITERATURE DOCUMENTS

Examiner Initials*	Cite No. ¹	Include name of the author (in CAPITAL LETTERS), title of the article (when appropriate), title of the item (book, magazine, journal, serial, symposium, catalog, etc.), date, page(s), volume-issue number(s), publisher, city and/or country where published.	T ²
MA		Haid et al., "The Cervical Spine Study Group anterior cervical plate nomenclature," Neurosurg. Focus/Volume 12, Jan. 2002	

Examiner Signature	/Michael Araj/	Date Considered	01/06/2007
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Sheet 1

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Examiner Initials*	Cite No. ¹	Document Number	Publication Date MM-DD-YYYY	Name of Patentee or Applicant of Cited Document	Pages, Columns, Lines, Where Relevant Passages or Relevant Figures Appear
		Number-Kind Code ² (if known)			
MA		US- 5,135,210	08-04-1992	Michelson	
		US- 5,151,103	09-29-1992	Synthes (U.S.A.)	
		US- 5,250,061	10-05-1993	Michelson	
		US- 5,364,399	11-15-1994	Danek Medical, Inc.	
		US- 5,484,437	01-16-1996	Michelson	
		US- 5,505,732	04-09-1996	Michelson	
		US- 5,513,827	05-07-1996	Karlin Technology, Inc.	
		US- 5,522,899	06-04-1996	Sofamor Danek Properties, Inc.	
		US- 5,549,612	08-27-1996	Codman & Shurtleff, Inc.	
		US- 5,578,034	11-26-1996	Danek Medical, Inc.	
		US- 5,626,266	05-06-1997	Michelson	
		US- 5,653,713	08-05-1997	Michelson	
		US- 5,662,300	09-02-1997	Michelson	
		US- 5,735,853	04-07-1998	Olerud	
		US- 5,776,199	07-07-1998	Sofamor Danek Properties	
		US- 5,797,909	08-25-1998	Michelson	
		US- 6,032,309	03-07-2000	Michelson	
		US- 6,080,155	06-27-2000	Michelson	
		US- 6,083,228	07-04-2000	Michelson	

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Signature

/Michael Araj/

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Sheet	2	of	6
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MA		US- 6,096,038	08-01-2000	Michelson	
		US- 6,120,503	09-19-2000	Michelson	
		US- 6,136,001	10-24-2000	Michelson	
		US- 6,139,550	10-31-2000	Michelson	
		US- 6,142,997	11-07-2000	Michelson	
		US- 6,152,927	11-28-2000	SDGI Holdings, Inc.	
		US- 6,159,214	12-12-2000	Michelson	
		US- 6,190,388	02-20-2001	Michelson, et al.	
		US- 6,193,721	02-27-2001	Michelson	
		US- 6,200,320	03-13-2001	Michelson	
		US- 6,210,412	04-03-2001	Michelson	
		US- 6,241,770	06-05-2001	Michelson	
		US- 6,257,459	07-10-2001	Michelson	
		US- 6,269,974	08-07-2001	Michelson	
		US- 6,270,498	08-07-2001	Michelson	
		US- 6,299,030	10-09-2001	Michelson	
		US- 6,306,139	10-23-2001	Scintx	
		US- 6,318,602	11-20-2001	Michelson	
MA		US- 6,350,283	2-26-2002	Michelson	

FOREIGN PATENT DOCUMENTS

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		Number-Kind Code ² (if known)			
MA		US- 6,364,880	04-02-2002	Michelson	
		US- 6,383,186	05-07-2002	Michelson	
		US- 6,398,783	06-04-2002	Sulzer Spine-Tech Inc.	
		US- 6,413,259	07-02-2002	Blackstone Medical, Inc	
		US- 6,416,528	07-09-2002	Michelson	
		US- 6,428,542	08-06-2002	Michelson	
		US- 6,436,098	08-20-2002	Sofamor Danek Holdings, Inc.	
		US- 6,440,139	08-27-2002	Michelson	
		US- 6,447,547	09-20-2002	Sofamor Danek Group, Inc.	
		US- 6,454,769	09-24-2002	Spinal Concepts, Inc.	
		US- 6,454,771	09-24-2002	Michelson	
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Application Number	10/826,285
Filing Date	April 19, 2004
First Named Inventor	BINDER
Art Unit	3732
Examiner Name	Unknown
Attorney Docket Number	0218.007.0002

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Examiner Name	Unknown
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Notice of References Cited

Application/Control No.
10/826,285

Examiner
Michael J. Araj

Applicant(s)/Patent Under
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BINDER ET AL.

Art Unit
3733

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	J	US-			
	K	US-			
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